

1 Traeger Machetanz, Esq.
Thomas R. Krider, Esq.
2 OLES MORRISON RINKER & BAKER, LLP
745 Fourth Avenue, Suite 502
3 Anchorage, AK 99501-2136
Telephone: (907) 258-0106
4 Telecopier: (907) 258-5519

5 Attorneys for Nugget Construction Co., Inc.,
6 and USF&G, Defendants

7 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

8 UNITED STATES OF AMERICA for the)
use of NORTH STAR TERMINAL &)
9 STEVEDORE COMPANY, d/b/a NORTHERN)
STEVEDORING & HANDLING, and NORTH)
10 STAR TERMINAL & STEVEDORE COMPANY,)
d/b/a Northern Stevedoring &)
11 Handling, on its own behalf,)

No. A98-009 CIV (TMB)

12 Plaintiffs,)

13 and)

14 UNITED STATES OF AMERICA for the)
use of SHORESIDE PETROLEUM, INC.,)
d/b/a Marathon Fuel Service, and)
15 SHORESIDE PETROLEUM, INC., d/b/a)
Marathon Fuel Service, on its own)
16 behalf,)

NUGGET'S RESPONSE TO MOTION
FOR SETTLEMENT CONFERENCE

17 Intervening Plaintiffs,)

18 and)

19 METCO, INC.,)

20 Intervening Plaintiff,)

21 vs.)

22 NUGGET CONSTRUCTION, INC.; SPENCER)
ROCK PRODUCTS, INC.; UNITED)
23 STATES FIDELITY AND GUARANTY)
COMPANY; and ROBERT A. LAPORE,)

24 Defendants.)
25 _____)

1 At the June 8, 2006 status hearing, the Court asked the parties
2 whether there was any reason to set a settlement conference. Given
3 counsels' responses, the Court correctly inferred that there was no
4 point in doing so then. So what has changed since then? The answer
5 is: nothing.

6 Settlement attempts to date have been fruitless and there is no
7 reason to believe this would change absent some dramatic turn of
8 events in the case. Should such a change occur, however, Nugget is
9 more than willing to try and settle this matter and would be agreeable
10 to another settlement conference. However, as the Court is aware
11 (based on pleadings filed by USF&G), Shoreside and Metco were recently
12 each made settlement offers in accordance with Judge Holland's 2002
13 decision, including interest and attorneys' fees,¹ and declined to even
14 acknowledge those offers, much less accept them, and no counteroffers
15 have been received.

16 Based on this, Nugget's response on June 8 is the same as it is
17 now: there is no reason to hold a settlement conference prior to a
18 decision on the outstanding Motions for Summary Judgment on
19 Plaintiffs' State law claims. It is apparent that the existence of
20 these baseless claims, particularly those sounding in tort, precludes
21 meaningful settlement discussions.

22 It is also quite surprising that Plaintiffs would suggest Judge
23 Holland as the settlement judge. Given Judge Holland's history in
24 this matter, Nugget does not believe that he would be the most
25 effective mediator and would ask that another judge be appointed.

¹ These offers were made not because Nugget believes Plaintiffs are entitled to full recovery, but because Nugget fully expected to have them rejected, thereby allowing Nugget to seek its attorneys' fees after trial.

1 Dated: July 8, 2006

2 OLES MORRISON RINKER & BAKER LLP
3 Attorneys for Nugget Construction,
4 Inc., and United States
5 Fidelity and Guaranty Co.

6 By: s/Thomas R. Krider

7 Thomas R. Krider

8 krider@oles.com

9 Washington Bar No. 29490

10 745 West 4th Avenue, Suite 502

11 Anchorage, AK 99501

12 Phone: (907) 258-0106

13 Fax: (907) 258-5519

14
15
16
17
18
19
20
21
22
23
24
25
OLES MORRISON RINKER & BAKER LLP
745 West Fourth Avenue, Suite 502
Anchorage, Alaska 99501-2136
Tel: (907) 258-0106 Fax: (907) 258-5519

CERTIFICATE OF SERVICE

I hereby certify that on this 8th
day of July, 2006, a true and correct
copy of the foregoing was served

electronically, via ECF on:

Michael W. Sewright, Esq.
mws@bpbk.com
Burr, Pease & Kurtz
810 N Street
Anchorage, AK 99501

Steven J. Shamburek, Esq.
shamburek@gci.net
Law Office of Steven J. Shamburek
425 G Street, Suite 630
Anchorage, AK 99501-5872

Paul Stockler, Esq.
paulstockler@aol.com
1309 West 16th Avenue
Anchorage, AK 99501

Herbert A. Viergutz, Esq.
barmar@gci.net
Barokas Martin & Tomlinson
1029 West Third, Suite 280
Anchorage, AK 99501

C. Patrick Stoll, Esq.
cps@hvslaw.com
Herrig Vogt & Stoll LLP
4210 Douglas Bay Blvd., Suite 100
Granite Bay, CA 95746-5902

OLES MORRISON RINKER & BAKER LLP

By: s/Thomas R. Krider

P-TRK Response to Motion for Settlement Conference 99310.0002.doc